

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONALD and LEILANI
KILPATRICK, husband and wife.

Plaintiffs,

V.

TAYLOR, BEAN and WHITAKER
MORTGAGE CORPORATION;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEM
("MERS"); BANK OF AMERICA,
N.A.; NORTHWEST TRUSTEE
SERVICES, INC.; JOHN DOES
NOS. 1-50,

Defendants.

BEFORE THE COURT is the Motion To Dismiss (ECF No. 8) filed by Defendants Mortgage Electronic Registration Systems, Inc., and Bank of America, N.A., in which Defendant Northwest Trustee Services, Inc., joins (ECF No. 12). The motion is heard without oral argument.

Plaintiffs have not filed a response to the motion and the time has long passed for doing so. LR 7.1(b)(2)(B) (21 days after filing of a dispositive motion). Defendants' motion was filed on July 29, 2013, and therefore, any response was due no later than August 19, 2013. Per LR 7.1(d), the failure to comply with the requirements of LR 7.1(b) "may be deemed consent to entry of

**ORDER GRANTING
MOTION TO DISMISS-**

1 an Order adverse to the party who violates these rules.”

2 When evaluating the sufficiency of a complaint, a court is not required
 3 “to accept as true allegations that are merely conclusory, unwarranted
 4 deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*,
 5 536 F.3d 1049, 1056-57 (9th Cir. 2008). Although they may provide the
 6 framework of a complaint, legal conclusions are not accepted as true and
 7 “[t]hreadbare recitals of elements of a cause of action, supported by mere
 8 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, __ U.S. __, 129
 9 S.Ct. 1937, 1949-50 (2009). Factual allegations must be enough to raise a right
 10 to relief above the speculative level, on the assumption that all the allegations
 11 in the complaint are true (even if doubtful in fact). *Bell Atl. Corp. v. Twombly*,
 12 550 U.S. 544, 555, 127 S.Ct. 1955 (2007). “A complaint must contain
 13 sufficient factual matter, accepted as true, to state a claim to relief that is
 14 plausible on its face.” *Iqbal*, 129 S.Ct. at 1949. “A claim has facial plausibility
 15 when the plaintiff pleads factual content that allows the court to draw the
 16 reasonable inference that the defendant is liable for the misconduct alleged.”
 17 *Id.*

18 For the reasons set forth in Defendants’ motion, Plaintiffs’ Complaint
 19 fails to meet the aforementioned standards. The factual allegations in the
 20 Complaint are conclusory and insufficient to raise a right to relief above the
 21 speculative level. Principally for this reason, and in light of the fact
 22 Defendants have not filed a response, Defendants’ Motion To Dismiss (ECF
 23 No. 8) is **GRANTED** pursuant to Fed. R. Civ. P. 12(b)(6). Although counsel
 24 has not appeared on behalf of Defendant Taylor, Bean and Whitaker Mortgage
 25 Corporation and therefore, it has not joined in the Motion To Dismiss, it too is
 26 dismissed as a Defendant. The factual allegations in the Complaint are
 27 conclusory and insufficient to raise a right to relief above the speculative level

1 as to any of the named Defendants. Plaintiff's Complaint is **DISMISSED** with
2 prejudice and without leave to amend.

3 **IT IS SO ORDERED.** The District Executive is directed to enter this
4 order and forward copies to counsel. The file shall be **CLOSED**.

5 **DATED** this 17th of September, 2013.

6 *s/Lonny R. Sukko*
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8 LONNY R. SUKCO
United States District Judge
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